

SUBCHAPTER B—ACQUISITION PLANNING

PART 1909—CONTRACTOR QUALIFICATIONS

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AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13203, Apr. 3, 1985, unless otherwise noted.

Subpart 1909.4—Debarment, Suspension, and Ineligibility

1909.403 Definitions.

The Agency Procurement Executive, is designated the “debarring official” and the “suspending official” as defined in FAR 9.403 and is designated as the agency official authorized to make the decisions required in FAR 9.405(a), 9.405-1(b), 9.405-2, 9.406-1(c), and 9.407-1(d).

1909.404 Consolidated list of debarred, suspended, and ineligible contractors.

(a) The Policy and Procedures Staff, Office of Contracts, shall be responsible for the maintenance and distribution of the GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors. It will be coordinated with the Solicitation Mailing List and appropriate notations will be made on both lists, when additions or deletions are necessary. Contracting Officers shall notify the Policy and Procedures Staff, Office of Contracts, of their distribution needs and shall ensure the list is used effectively.

(b) The Agency Procurement Executive (or designee) is responsible for notifying GSA of the information required by FAR 9.404(b).

1909.406 Debarment, suspension, and ineligibility.

1909.406-3 Procedures.

(a) *Investigation and referral.* Any officer of the Agency who becomes aware of circumstances which may serve as a basis for a debarment, suspension, or ineligibility shall report the circumstances by memorandum to the Agency Procurement Executive for consideration of debarment, suspension or ineligibility action.

(b) *Decision-making process.* (1) Contractors shall be given the opportunity to submit, in person, in writing, or through a representative, information and arguments in opposition to a proposed debarment or suspension. All rebuttals shall be addressed to the Agency Procurement Executive. However, if a response to the proposed debarment or suspension is not received by the Agency Procurement Executive within 30 calendar days of receipt of the notice, the debarment or suspension shall become final.

(2) If a contractor, or a representative, desires to present information and arguments in person to the Agency Procurement Executive, an oral presentation will be held within 20 calendar days of receipt of the request, unless a longer period of time is requested by the contractor. Hearings will be held before a three-person fact-finding board composed of one member each from the Office of General Counsel and Congressional Liaison, the Bureau of Management, and the Office of Contracts, other than the initiating officer. The fact-finding board shall deliver written findings to the Agency Procurement Executive (together with a transcription of the proceedings, if made) within 10 calendar days after the hearing. The findings shall resolve any facts in dispute based on a preponderance of the evidence presented and determine whether a cause for debarment or suspension exists.

(c) *Debarring/suspending official's decision.* The debarring/suspending official's final decision shall be made in

writing in accordance with FAR 9.406-3 and notice of the decision will be given in accordance with FAR 9.406-3. A copy of the notice shall be given to the affected agency component.

PART 1910—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

- 1910.004-70 Brand name products or equal.
- 1910.004-71 Limits on the use of brand name or equal purchase descriptions.
- 1910.004-72 Solicitations, brand name or equal descriptions.
- 1910.004-73 Offer evaluation and award, brand name or equal descriptions.
- 1910.004-74 Procedure for negotiated procurements and small purchases.
- 1910.011 Solicitation provisions and contract clauses.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13204, Apr. 3, 1985, unless otherwise noted.

1910.004-70 Brand name products or equal.

(a) *General.* Consistent with the policy stated in FAR 10.004(a)(2), USIA acquisitions will generally not be based on a specifically identified product or feature(s) thereof. However, under unusual circumstances such an approach may be used as described below.

(b) *Citing brand name products.* Brand name or equal purchase descriptions shall cite all brand name products known to be acceptable and of current manufacture. If the use of a brand name or equal purchase description results in the purchase of an acceptable brand name product which was not listed as an "equal" product, a reference to that brand name product should be included in the purchase description for later acquisitions. If a brand name product is no longer applicable, the reference thereto shall be deleted from subsequent purchase description.

(c) *Specifying essential characteristics.* (1) It is imperative that brand name or equal purchase descriptions specify each physical or functional characteristic of the product that is essential to the intended use. Failure to do so may result in a defective solicitation and the necessity to resolicit the requirements. (See 1910.004-73.) Care must be taken to avoid specifying char-

acteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition.

(2) When describing essential characteristics, permissible tolerances should be indicated. Avoid specifying a characteristic (e.g., a specific dimension) of a brand name product unless it is essential to the Government's need. The contracting officer must be able to justify the requirement.

1910.004-71 Limits on the use of brand name or equal purchase descriptions.

(a) *General.* The use of brand name or equal purchase descriptions in solicitations is intended to promote competition by encouraging the offering of products that are equal in all material respects to brand name products cited in such descriptions. Identification by brand name does not indicate a preference for the products mentioned but indicates the quality and characteristics of products that will meet the Government's needs. Where a component of an item is described in the solicitation by a brand name or equal purchase description and the contracting officer determines that application of the provision of 1952.210-70 would be impracticable, the requirement to include the entry described in 1910.004-72(a) shall not apply. If the provision is included in the solicitation for other reasons, there also shall be included in the solicitation a statement to identify either the component parts (described by brand name or equal descriptions) to which the provision applies or those to which it does not apply. This also applies to accessories related to an end item where a brand name or equal purchase description of the accessories is a part of the description of an end item. Brand name or equal descriptions shall not be used to acquire a particular product under the guise of competitive acquisition to the exclusion of other products that would meet the actual needs.

(b) In small purchases within the open market limitations, brand name policies and procedures shall be applicable to the extent practicable.